SUPREME COURT OF THE UNITED STATES.

No. 41.

JOSEPH W. WALSH, ADM'R OF WILLIAM RECTOR, DECEASED, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Writ of Error	1*a*	3
Citation and service	3*a*	3
Declaration	1	4
Summons, and Marshal's return	2	5
Jury sworn—Verdict and Judgment	4	7
Execution	5	7
Marshal's return	6	8
Alias writ of execution	6	8
Marshal's return	7	9
Writ of *scire facias*, to revive Judgment, &c.	8	10
Marshal's return	9	11
Plea and Demurrer	10	12
Judgment and Execution issued	11	12
Clerk's Certificate	12	13
Appeal bond	12	13

S. D. Langtree, Print.

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Writ of Error	1a	3
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Declaration	1	4
Summons, and Marshal's return	2	5
Jury sworn—Verdict and Judgment	4	7
Execution	5	7
Marshal's return	6	8
Alias writ of execution	6	8
Marshal's return	7	9
Writ of error Recess, to revive Judgment, &c.	8	10
Marshal's return	9	11
Plea and Demurrer	10	12
Judgment and Execution issued	11	12
Clerk's Certificate	12	12
Appeal bond	12	12

S. D. Langhorne, Print.

MISSOURI DISTRICT, *sct.*

The President of the United States to the judges of the circuit court of the United States for the eighth circuit and district of Missouri, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment, of a plea in the said circuit court, between the United States, plaintiffs, and Joseph W. Walsh, administrator of William Rector, deceased, defendant, a manifest error hath happened, to the great damage of the said defendant, as aforesaid, as by his complaint appears; we, being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, together with this writ, to the Supreme Court of the United States; so that you have the same before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of [L. s.] the United States, the eighteenth day of May, in the year one thousand eight hundred and forty.

Isssued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

In obedience to the within writ, I herewith transmit a certified copy of the record and proceedings of the circuit court of the U. States for the Missouri district, in a certain matter therein determined between the United States and the administrator of William Rector, deceased. St. Louis, 18 September, 1840.

JO. GAMBLE,
Clerk U. S. C. C., Missouri district.

MISSOURI DISTRICT, *ss.*

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington

City, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein Joseph W. Walsh, administrator of William Rector, deceased, is plaintiff, and the said United States are defendants, in error, to shew cause, if any there be, why the judgment rendered against the said Joseph W. Walsh, administrator as aforesaid, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Robert W. Wells, judge of the United States for the district of Missouri, the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty.

R. W. WELLS.

I acknowledge service of the above citation, this 23d May, 1840.

ARTHUR L. MAGENIS,
U. S. Distict Att'y, Mo. district.

MISSOURI DISTRICT, *sct.*

THE UNITED STATES,
vs.
PETER A. WALSH, Adm., de bonis non, of William Rector, deceased.

Be it remembered, that heretofore, to wit: on the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and thirty-six, the United States, by Mr. Magenis their attorney, filed in the office of the clerk of the district court of the United States for the district of Missouri, their declaration against the administrator of William Rector, deceased, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Missouri District, to wit:* } In the district court, September Term, 1836.

The United States of America by their attorney, complain of Charles D. Drake, administrator of all and singular the goods and chattels, rights and credits of William Rector, deceased, which were left unadministered by Whorton Rector, of a plea of trespass on the case, for that whereas the said William during his lifetime, to wit: on the first day of June in the year 1825, at the district aforesaid, was indebted to the said plaintiffs in the sum of one hundred thousand dollars lawful money of the United States, for so much money by the said William before that time had and received to the use of the said plaintiffs, and also in the further sum of one hundred thousand dollars, for so much money by the said plaintiffs before that time lent and advanced to and paid, laid out and expended for the use of said

William, and at his special instance and request; and being so indebted, he, the said William, in consideration thereof, afterwards to wit: on the day and year last aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said several sums of money above-mentioned, when he, the said William should be thereunto afterwards requested; nevertheless the said William, not regarding his said promise and undertaking, did not, during his lifetime pay to the said plaintiffs the said several sums of money above-mentioned, or any or either of them, or any part thereof; but the said William, during his lifetime, although often requested so to do, the same did wholly neglect and refuse, and the said Whorton and the said Charles D., administrators as aforesaid, since the death of said William to pay the said several sums of money above-mentioned, or any or either of them, or any part thereof to the said plaintiffs, have hitherto wholly neglected and refused, and to do the same do still neglect and refuse, to the damage of said plaintiffs of one hundred thousand dollars, and therefore they bring their suit, &c.

On which said declaration was the following endorsement,

Let a summons issue. ARTHUR L. MAGENIS,
U. S. Atty. Mo. District.

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said district court in tenor and form following to wit:

MISSOURI DISTRICT, *sct.*

The President of the United States, to the Marshal of the said district, greeting:

You are hereby commanded to summon Charles D. Drake, administrator of all and singular the goods and chattels, rights and credits of William Rector, deceased, which were left unadministered by Whorton Rector, that he be and appear before the court of the United States for the Missouri district, at the next term thereof, to be held at the city of Jefferson, within and for said district, on the first Monday of September next, then and there to answer unto the United States of America of a plea of trespass on the case, to the damage of said plaintiffs of one hundred thousand dollars; hereof fail not, and have you then there this writ:

[L. S.] Witness Joseph Gamble, clerk of the said district court, the 27th day of July, 1836.

Issued at office in the city of Jefferson, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

And the marshal to whom the same was directed, duly returned the said writ with his return thereon, endorsed as follows, to wit:

Executed this writ on Chs. D. Drake, the within named defendant, by his acknowledging service, and by leaving with him a copy of the same at the city of St. Louis, on the 6th day of August, 1836.

A. JONES, *Marshal.*
By ELLIOTT LEE, *Deputy.*

And this cause was afterwards continued until the September term of said district court, in the year of our Lord one thousand eight hundred and thirty-seven, at which said term, in the record of proceedings of said district court is the following entry, to wit:

THE UNITED STATES
vs.
CHARLES D. DRAKE, Administrator de bonis non of William Rector.

It is ordered by the court that this cause be continued and transferred to the next term of the circuit court of the United States, to be held at the city of St. Louis, in the district of Missouri, on the first Monday of April next, in compliance with the requisitions of an Act of Congress, entitled, "An act supplementary to the act entitled 'An act to amend the judicial system of the United States.' Approved the 3d of March, 1837."

It is further ordered that a transcript of the record of proceedings of said court in this cause, with all original papers on file therein, be certified and sent to said circuit court, and that a schedule of said original papers be filed of record in this court.

And afterwards, to wit: on the fourteenth day of October, in the year one thousand eight hundred and thirty-seven, a transcript of the record of proceedings of said district court, together with the original papers on file in said cause, from which the foregoing is truly copied, were filed in the office of the clerk of the circuit court of the United States for the district of Missouri at St. Louis.

And afterwards, to wit: at the April term of said circuit court, on the tenth day of April, in the year one thousand eight hundred and thirty-eight, comes the district attorney and suggests to the court here, that since the last continuance of this cause, the said Charles D. Drake, administrator as aforesaid, has resigned his said letters of administration.

And now here also comes Peter A. Walsh, and brings into court letters of administration of all and singular the goods and chattels, rights and credits, of the said William Rector, unadministered, in due form granted by the county court of St. Louis county, by which it sufficiently appears to the court here that the said Peter A. Walsh, is administrator as aforesaid.

Whereupon the said Peter A. Walsh, as administrator as aforesaid, files his plea and offers himself to defend of and upon the premises aforesaid. Which said plea, filed as aforesaid, is in the words and figures following, to wit:

And the said Peter A. Walsh, administrator of all and singular

the goods and chattels, rights and credits of the said William Rector, remaining unadministered by the said Charles D. Drake, comes and defends the wrong and injury, when &c., and says that the said William Rector, deceased, in his lifetime, did not undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

And afterwards, to wit: on the twelfth day of April, in the year last aforesaid, at the same term of the said circuit court, come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit: Thomas Andrews, Daniel F. Lee, Eli L. Clark, John H. Baldwin, Daniel Colkett, William Scott, John E. Cowan, Benjamin W. Ayres, Abel R. Corbin, Amos S. Corson, John H. McMillan, Edward Choteau, twelve good and lawful men, who being duly elected, tried, and sworn, well and truly to try the issue joined between the parties aforesaid, upon their oath aforesaid, do say that the said William Rector, the said defendant's intestate, in his lifetime did undertake and promise in manner and form as the said plaintiffs have in declaring alleged, and they assess the damages by them sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned, to the sum of seventy-seven thousand seven hundred and twenty-four dollars and forty-nine cents.

Therefore, it is considered by the court here that the said United States recover against the said Peter A. Walsh, administrator of all and singular the goods and chattels, rights and credits, of the said William Rector, unadministered, their damages aforesaid, in form aforesaid, by the jury assessed, and that they have execution thereof against the goods and chattels, lands and tenements of the said William Rector, in the hands of his said administrator, unadministered.

And thereupon, afterwards to wit: on the twenty-first day of April, in the year one thousand eight hundred and thirty-eight, a writ of execution issued on the judgment aforesaid, in tenor and form following, to wit:

MISSOURI DISTRICT, *sct.*

The President of the United States, to the marshal of the Missouri district, greeting:

Whereas, on the twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, at our circuit court, before our judges thereof, for the eighth circuit and district of Missouri, the United States recovered against Peter A. Walsh, administrator de bonis non of William Rector, deceased, the sum of seventy-seven thousand seven hundred and twenty-four dollars and forty-nine cents, for their damages by them sustained by reason of the non-performance of the promises and undertakings in the declara-

tion mentioned, and also their costs and charges by them about their suit in that behalf expended, which to the said United States were adjudged, as appears to us of record.

These are therefore to command you, that of the goods and chattels, lands and tenements, of the said William Rector, deceased, in the hands of his said administrator unadministered, you cause to be made the damages and costs aforesaid, and that you have the same before our said judges on the first Monday of April next, to render to the said United States their damages and costs aforesaid. And that you certify to our said judges how you execute this writ. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of
[L. S.] the United States, the twenty-first day of April, in the year one thousand eight hundred and thirty-eight.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

And afterwards, at the return term of said writ of execution, the marshal of said district duly returned the same with his return thereto endorsed in the words and figures, following, to wit:

Levied upon lands in Chariton county, district of Missouri, as described in the within schedule, but did not sell the same for want of time, and there was no goods or chattels in the hands of the administrator of said William Rector, deeeased.

JAMES H. RELFE,
Marshal for the Missouri District.

The above property was not sold by reason of a change in the times of holding the circuit court in the county of Chariton, by act of the General Assembly of Missouri.

JAMES H. RELFE, *Marshal.*

And afterwards, on the twenty-fifth day of April, in the year one thousand eight hundred and thirty-nine, an alias writ of execution issued upon said judgment in the words and figures following, to wit:

MISSOURI DISTRICT, *sct.*

The President of the United States to the marshal of the Missouri district, greeting:

Whereas, on the 12th day of April, in the year of our Lord one thousand eight hundred and thirty-eight, at our circuit court, before our judges thereof, the United States recovered against Peter A. Walsh, administrator de bonis non of William Rector, deceased, the sum of seventy-seven thousand seven hundred and twenty-four

dollars and forty-nine cents for their damages by them sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned, together with their costs and charges by them about their suit in that behalf expended, which to the said United States were adjudged, as appears to us of record.

These are therefore to command you as you were heretofore commanded, that of the goods and chattels of the said William Rector, in the hands of his said administrator unadministered, you cause to made the damages and costs aforesaid. And for want of sufficient goods and chattels whereon to levy and make the same, we command you that of the lands and tenements of the said William Rector, at the time of his death in the hands of his said administrator, you cause to be made the damages and costs aforesaid, and that you have the same before our said circuit court on the first Monday of October next, to render to the said United States their damages and costs aforesaid, and that you certify to our said judges how you execute this writ. Hereof fail not and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of
[L. S.] the United States, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Issued at office in the city of St. Louis, under the seal of said court the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

Which said writ of execution was duly returned by the marshal to whom the same was directed, with the following endorsements thereon, to wit:

Levied on 47 quarter sections of land in the countys of Chariton, Linn and Carrol, in the district of Missouri, to satify this execution; see list annexed.

JAMES H. RELFE,
May 17th, 1839. *Marshal for the Missouri District.*

Received, St. Louis, August 9th, 1839, from Joseph W. Walsh, administrator of the estate of Wm. Rector, deceased, a certificate of deposite in the Bank of the State of Missouri, on the 16th of May, 1839, to the credit of the Treasurer of the United States, for the sum of three thousand three hundred and twenty-five dollars, which I am instructed by the Solicitor of the Treasury in his letter of 8th June, to place to the credit of the judgment on which this execution issued.

JAMES H. RELFE,
Marshal for the Missouri District.

Returned not satisfied, by order of the district attorney.

JAMES H. RELFE,
Marshal for the Missouri District.

Returned with, and attached to, said writ of execution, is the following order, to wit:

THE UNITED STATES,
vs.
PETER A. WALSH, Adm'r of Wm. Rector, deceased.

To the marshal of the United States for the Missouri district:

Sir: You will please to return the above execution, as no sale can take place under the same, Mr. P. A. Walsh having resigned his letters of administration, and new ones having been granted on said estate to Joseph Walsh, at present administrator of said estate.

ARTHUR L. MAGENIS,
U. S. Att'y for the Missouri District.

And afterwards, to wit: on the eighteenth day of February, in the year one thousand eight hundred and forty, the said United States sued out a writ of scire facias to revive said judgment against Joseph W. Walsh, administrator of said William Rector, in tenor and form following, to wit:

MISSOURI DISTRICT, *sct.*

The President of the United States to the marshal of the Missouri district, greeting:

Whereas, on the twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, at a circuit court of the United States, begun and held at the city of St. Louis, on the first Monday of April, in the year aforesaid, the United States, by the judgment of said court recovered against Peter A. Walsh, administrator de bonis non of a certain William Rector, late of said district, the sum of seventy-seven thousand seven hundred and twenty-four dollars and forty-nine cents, for their damages by them sustained, by reason of the non-performance of the promises and undertakings of the said defendant's intestate in his lifetime, together with their costs and charges by them about their suit in that behalf expended, whereof the said Peter A. Walsh, administrator as aforesaid, was convict, as appears to us of record.

And whereas, the said Peter A. Walsh has since resigned his said letters of administration, and has been succeeded as administrator as aforesaid, by Joseph W. Walsh, as by the said plaintiffs hath been stated. And now, on behalf of the said United States it hath been understood, that although the judgment aforesaid, in form aforesaid, is given, yet execution for the damages and costs aforesaid, still remains to be made for them.

Wherefore the said plaintiffs have besought that a proper remedy

be granted them in this behalf; and as it is right that those things, which in the said court are lawfully transacted and adjudged, should be carried into due and speedy execution, you are therefore hereby commanded, that by good and lawful men of your district, you give notice to Joseph W. Walsh, administrator of all and singular the goods and chattels, rights and credits, of the said William Rector, deceased, in his hands unadministered, that he be and appear before the said circuit court at the next term thereof, to be held at the city of St. Louis, within and for the district of Missouri, on the first Monday of April next, to show if he hath, or can say anything for himself why the said United States ought not to have their execution against him for the damages and costs aforesaid, to be levied of the goods and chattels, lands and tenements, which were of the said William Rector at the time of his death in the hands of his said administrator to be administered, according to the force, form, and effects of the recovery aforesaid, if the said Joseph W. Walsh shall think fit. And further to do and receive what the said court shall then and there consider concerning him in this behalf, and have you then there the names of those by whom you shall give notice, and this writ.

Witness the honorable Roger B. Taney, Chief Justice of
[L. S.] the United States, the eighteenth day of February, in the year one thousand eight hundred and forty.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

And afterwards, on the return day thereof, the marshal to whom the said writ of scire facias was directed, duly returned the same, with his return thereto, endorsed as follows, to wit:

I do hereby acknowledge service on me of the foregoing writ, on this 19th February, 1840.

J. W. WALSH,
Pub. Adm., St. Louis county.

Executed this process, by taking the written acknowledgment of the defendant, at St. Louis, district of Missouri, on the 26th February, 1840, in the presence of Hugh O'Neal and Patrick Walsh, two good and lawful men of this district.

JAMES M. RELFE,
Marshal for the Missouri district.

And afterwards, to wit: at the April term of said circuit court, on the seventeenth day of April, in the year one thousand eight hundred and forty, the said Joseph W. Walsh, administrator as aforesaid, by Mr. Gamble, his attorney, appeared and filed his plea, in the words and figures following, to wit:

And the said defendant, by his attorney, comes and says that the said plaintiffs ought not to have execution of their said judgment, in the scire facias mentioned, against the goods and chattels, lands and tenements, which were of the said William Rector at the time of his death, in the hands of the said defendant to be administered; because, he says, that after the rendition of the said judgment in the scire facias mentioned, the said plaintiffs, on the twenty-sixth day of March, in the year one thousand eight hundred and thirty-nine, exhibited a transcript of the said judgment in the county court of St. Louis, in the State of Missouri, to be classed as a debt against said estate, under the laws of the State of Missouri; and the said judgment was then and there, by the said court, classed as a claim against the said estate; and the said county court are, under the laws of the State of Missouri, proceeding to order the administration of said estate of said Rector, so as to apply the assets of said estate to satisfy the said judgment, according to the priority which is given to said judgment by the acts of Congress in such case made and provided; and this, said defendant is ready to verify; wherefore he prays judgment.

Whereupon the said plaintiffs, by their attorney, filed their demurrer to said plea, as follows, to wit:

And the said plaintiffs, by their attorney, say that the plea of the said defendant, and the matters and things in said plea contained, in manner and form as the same are therein stated and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having their execution aforesaid; and that they, by the law of this land, to answer the same; and this they are ready to verify; wherefore they the judgment of this court, and their execution aforesaid.

And afterwards, to wit: at the term last aforesaid of said circuit court, in the year aforesaid, in the record of proceeding, is the following entry, to wit:

MONDAY, 20 *April*, 1840.

THE UNITED STATES
vs.
JOSEPH W. WALSH, Adm. of Wm. Rector.

Now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and thereupon all and singular the matters whereof the parties aforesaid have put themselves upon the judgment of the court, are by them submitted to the court, which being seen and heard, and by the court here fully understood, and mature deliberation being thereupon had, for that it appears to the court here that the said plea of the said defendant and the matters

therein contained are not sufficient in law to bar or preclude them, the said plaintiffs, from having and maintaining their aforesaid action thereof against him, and that they, the said plaintiffs, are not bound by the law of the land to answer the same.

Therefore, it is considered by the court here that the said United States have execution against the said Joseph W. Walsh, administrator as aforesaid of William Rector, deceased, for their damages, costs, and charges aforesaid, in the writ of scire facias aforesaid mentioned, according to the force, form, and effect of the recovery aforesaid; and also their costs and charges, by them, about the prosecution of the scire facias, in this behalf expended.

And afterwards, to wit: on the fifteenth day of June, in the year one thousand eight hundred forty, a writ of execution issued against Joseph W. Walsh, administrator as aforesaid, pursuant to the judgment aforesaid, and returnable to the October term of said circuit court next succeeding its date, which said writ now remains in the hands of the marshal of the Missouri district.

MISSOURI DISTRICT, *sct.*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify that the foregoing (from page one to page eleven) is a full and true transcript of the record and proceedings of said court in a certain matter therein determined, between the United States, plaintiffs, and the administrator of William Rector, deceased, defendant, as the same is of record in my office.

In testimony whereof, I hereto subscribe my name, and
[L. S.] affix the seal of said court, at office, in the city of St. Louis, the 18th day of September, 1840.

JO. GAMBLE.

Know all men, by these presents, that I, Arthur L. Magenis, of the city of St. Louis and State of Missouri, am held and firmly bound unto the United States of America in the sum of one thousand dollars, upon condition that if Joseph W. Walsh, adm'r de bonis non of William Rector, deseased, shall pay and satisfy all costs that may accrue in the Supreme Court of the United States in the case of said Walsh, as administrator as aforesaid, against the said United States, in error, then this obligation to be void, otherwise in full force.

Witness my hand and seal, at the city and State aforesaid, this 21st May, 1840.

ARTHUR L. MAGENIS. [SEAL.]

A true copy of the bond for costs, filed in my office on the 18th day of September, 1840.

Test.

JO. GAMBLE,
Clk. U. S. C. C., Missouri district.